IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5702 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR HARAKCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:
Mr.I.R.Joshi with
MR DC DAVE for Petitioner
Mr.A.J.Desai, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/04/2000

ORAL JUDGEMENT

1. The petitioner, namely, Ashokkumar Harakchand Shah, who is a Kenyan citizen and not a citizen of India is aggrieved against the rejection of his application for Arms Licence on the ground that the Arms Licence can be granted only to a person- who is a citizen of India, according to the provisions of Sec.13(3) of the Arms Act,

1959.

2. The petitioner has come with the case that though he is a Kenyan citizen he is settled in Vapi, District Valsad since 1983 and has been residing there and was residing at Vapi at the time when he applied for licence as also on the date when the present writ petition was filed. The petitioner says that he is an industrialist and has established a paper Mill known as 'Daman Ganga Paper Mill Ltd.", which was previously known as "Haria Paper Mills Ltd." in G.I.D.C., Vapi with an investment of Rs.500 lacs in an area of 8089 sq.mts. providing employment to 115 people. It is alleged that the turn over of the said Mill for the year is Rs.617.50 lacs and the production of the paper per year is 5415 M.T. It is also the case of the petitioner that in addition to the aforesaid Paper Mill, he has also established five more large scale industrial units in and around Vapi providing employment to 200 persons and has contributed to the industrial growth and industrial production of the State of Gujarat and is also providing employment in the Factory to number of workers in the State. It is also the case of the petitioner that he has recently completed a huge Project of establishing a Factory/plant for manufacturing writing and printing papers in a declared backward area of Dharampur on a land admeasuring about 354728 sq.mts. at a cost of Rs.50 crores, which has further generated employment for 250 persons and has also contributed to the industrial production and progress of the State of Gujarat besides providing employment and opportunities of employment, as stated above. The petitioner has averred that he proposes to manufacture 33000 M.T. of paper per year from the said Plant and the production in the said Factory has already started. Apart from the petitioner's role in the industrial development and industry, the petitioner also claims that he is associated with welfare and charitable activities in the Society through various educational institutions, Hospitals and other social and charitable organisations in and around the area of Vapi and that he is rendering substantial social service including monetary donations to the said Institutions and it has been stated that the petitioner has accepted Gujarat and India as his permanent home land though he was born at Nairobi in Kenya. It was also orally stated by the learned counsel for the petitioner Mr. Joshi that petitioner's parents, grand parents and ancestors were all Indian and he got Kenyan citizenship because he was born at Nairobi in Kenya and he has chosen Vapi and surrounding area as his working place in the State of Gujarat, India since 1983 although he has not given up Kenyan citizenship. It has

also been submitted that he has been going to Nairobi (Kenya) intermittently. The averments made in ground (m) at page 28 of the Special Civil Application read with the contents of the petitioner's application for licence Columns 10(a) and (b) and Column 11(a) at page 42-43 show that earlier he had applied for such a licence on 7.2.92 before the Addl. District Magistrate, Valsad for self protection and such licence, which was granted as Licence No.195-Vapi, G.I.D.C., was held by the petitioner till 31.12.92 when he voluntarily surrendered the same because according to the petitioner at that time it remained no more necessary for him to possess the arm looking to the law and order situation prevailing at that time at the place of his working in the Industries at Vapi.

3. The petitioner has come with the case that in the recent past i.e. since year 1997 and onwards, the industrialists, as a class, have started facing the threat to their life, liberty and property and realising the law and order situation and the sensitivity of the area of his occupation and working and the fact that in the course of business the petitioner has to frequently visit the backward areas in Dharampur, which is almost a jungle for his new Project and sometimes he has to travel during the night and reach there during night hours and being an industrialist, he felt that it was necessary for him to possess an arm for his own protection and self defence in the probable and apprehended situations of attack and/or danger. In this background the petitioner moved an application on 6.10.97 before the District Magistrate, Valsad to possess 0.32 bore Revolver or Pistol. This Application dated 6.10.97 was sent to the District Magistrate, Valsad by the petitioner with a covering letter dt.6.10.97. The petitioner also addressed a letter dt. 10.8..97 to the Ministry of Home, Government of Gujarat requesting them to recommend the District Magistrate to issue permission for the Arms licence. The petitioner also sent a letter dt.17.3.98 to the District Magistrate, Valsad inquiring about the status of his application and had also put on record that the petitioner had started a large Unit at Ambheti Village in a backward area of Dharampur and that he has to travel even at odd hours to visit the site and that his application be considered favourably as early as possible. The petitioner then received the order dt.20.3.98 from the District Magistrate,Vlasad whereby the petitioner's application was rejected on the ground that under the provisions of S.13(3) of the Arms Act, the arms licence could be granted only to a citizen of India and since the petitioner was a Kenyan citizen, he cannot hold the arms licence. The petitioner then preferred an

Appeal dt.23.4.98 as provided under S.18 of the Arms Act. The appellate authority by his order dt.16.5.98 rejected the Appeal without giving any opportunity of being heard to the petitioner. This Appeal was also rejected on the same ground of S.13(3) that the petitioner was not a citizen of India and that a person who does not hold the citizenship of India cannot hold arms licence. The petitioner then challenged the aforesaid order by way of filing Special Civil Application No.1889/98 which was decided by this Court on 26.4.99. This court by its judgment and order dt.26.4.99 set aside the order dt.16.5.98, as passed by the appellate authority, on the grounds and for the reasons set out therein and the Court remanded the matter back to the appellate authority with a direction that it shall admit the Appeal and shall, after calling the records of the licensing authority and affording opportunity of being heard to the petitioner, decide the Appeal. The appellate authority then fixed the Appeal for hearing as was directed by this Court. The petitioner filed his written submissions before the appellate authority and the matter was fixed for hearing before the appellate authority on 27.5.99. The petitioner attended on the said date of hearing through his advocate and the submissions, as were included in the written submissions, were urged before the appellate authority. This time also the Appeal was dismissed by the respondent No.2 vide his order dt.15.6.99 and the order, as has been passed by the District Magistrate, was confirmed. The petitioner's grievance is that while his submissions have been noted, the same have not been dealt with and the Appeal has been rejected only on the ground that under S.13 of the Arms Act, the provision is to grant licence only to a citizen of India and whereas the petitioner is a Kenyan citizen and not a Citizen of India, it was not necessary to interfere with the order dt.20.3.98, as had been passed by the District Magistrate,Valsad and accordingly the Appeal was dismissed by the appellate authority in exercise of powers under S.18 of the Arms Act.

4. Aggrieved from the order dt.15.6.99 passed by the Home Department of the Government of Gujarat read with the order dt.20.3.98, as had been passed by the District Magistrate, Valsad, rejecting the petitioner's application for the licence and with the allegations and averments, as narrated above, the present Special Civil Application was filed by the petitioner in this Court on 2.8.99. On 10.8.99 rule returnable for 1.9.99 was issued. However, no return was filed on behalf of the respondents. Thereafter, the matter came up before this court on 14.3.2000. On 14.3.2000 the matter was heard

for some time and the learned counsel for the petitioner wanted some time to produce some more documents and accordingly the matter was posted for 23.3.2000. Thereafter, when the matter came up before the court on 23.3.2000, the learned A.G.P. wanted time to verify the correctness of the documents as had been filed on behalf of the petitioner and, therefore, as prayed by both the sides, the matter was posted today i.e. 4.4.2000. It may be pointed out that even up till this date, the respondents have not filed any reply to the petition. However, Mr.A.J.Desai, learned A.G.P.,has orally submitted that the petitioner has now shifted to Mumbai and he is residing at Mumbai and, therefore, he may move the Application before the concerned authority in the State of Maharashtra. While making reference to a letter dt:20.8.99 sent by the petitioner to the office of the District Superintendent of Police at Mograwadi,Valsad, Mr.Desai, learned A.G.P. has submitted that the petitioner has changed his residence and has shifted to 32,Ala Moana Premises Co-operative Society Ltd., Behind Khar Telephone Exchange, Khar (West), Mumbai. However,he has submitted that the correctness of the documents, as were filed by the petitioner with the affidavit dt.17.3.2000, have been verified from the Mumbai office and the same are found to be correct. These documents were required to be verified as to whether the petitioner had in fact any permit to stay over in India for all these years or not and as to whether such permit still subsists and if so upto what date. The last document at Annexure 'E' filed with the affidavit, as aforesaid, is a document issued by the Counsellor (Consular), High Commission of India, Nairobi (Kenya) certifying that the petitioner is holder of Kenyan Passport No.B-041213 and he is permitted to stay in India upto 2.5.2001 vide Government of Gujarat G.A.D.G. Nagar No.KYN-62-96 F-II dated 26.11.96 and further that the endorsement of his stay upto the above mentioned period has been done on his residential permit dated 9.7.96 issued by R.O. and Distt Supdt of Police, Bulsar, District - Bulsar.

5. The petitioner's challenge in this petition is mainly with reference to the provisions of Arms Act, 1959 read with Arms Rules, 1962 and has submitted that there is neither any express or implied ban either under the Arms Act or under the Arms Rules, 1962 so as to reject the application for licence on the ground that the petitioner is not a citizen of India. Learned counsel for the petitioner Mr.Joshi has made a detailed reference to the provisions of the Arms Act and the Arms Rules and has submitted that in the same enactment the Legislature has used the words 'person' and 'citizen' in different

provisions and wherever the Legislature wanted to restrict the scope of the Arms Act and the Arms Rules to 'citizen' it has used the word 'citizen' and in the provisions where the word 'person' has been used, it means that such person may be any person including a person who is not a citizen of India and that the licensing authority as well as the appellate authority have failed to comprehend the correct import of the provisions of the Arms Act and the Arms Rules resulting into the rejection of the petitioner's application. As against it, the learned A.G.P. has submitted that the petitioner's application has been rightly rejected in accordance with the provisions of S.13 of the Arms Act.

6. Before I proceed to examine the submissions made on behalf of both the sides, a brief reference be made to the Scheme of the Arms Act. The word 'person' as such has not been defined either under the Arms Act or under the Arms Rules. Even the General Clauses Act, 1897 gives only an inclusive definition of the word 'person' in Sec.3(42) and says that 'person' shall include any company or association or body of individuals, whether incorporated or not. However, this Court finds that in the provisions under the Arms Act and the Arms Rules, while in certain provisions the word 'person' has been used, the word 'citizen' has been used in other provisions and, therefore,one thing is clear that the Legislature itself has made a distinction while using the word 'person' and 'citizen at different places and different provisions through-out the Scheme of the Arms Act and the Rules made thereunder.

7. Under Chapter II - 'Acquisition, Possession, Manufacture, Sale, Import, Export and Transport of Arms and Ammunition' -

(a) Sec.3 provides for licence for acquisition and possession of firearms and ammunition, imposing a restriction against any person to acquire or have in his possession or carry any firearm or ammunition unless he holds a licence issued in accordance with the provisions of this Act and the Rules made thereunder.

(b) Sec.4 provides for the Licence for acquisition and possession of arms of specified description in certain cases and it has been provided that the Central Government may regulate the acquisition and possession of arms having regard to the circumstances prevailing in any area and further that it may also direct that no person shall acquire, have in his possession or carry in that area arms of such class or description as may be

specified in the Notification.

(c) Sec.5 deals with Licence for manufacture, sale, etc. of arms and ammunition and this Section also starts with the words, 'No person shall.....' In this Section also through out, the word 'person' has been used.

(d) Sections 6 and 7 deal with licence for shortening of guns or conversion of imitation firearms into firearms and prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition. These Sections start with the words, "No person shall....."

(e) Similar is the position with regard to provisions of Sections 8,9 and 10 dealing with prohibition of sale or transfer of firearms not bearing identification marks; prohibition of acquisition or possession by, or of sale or transfer to, young persons and certain other persons of firearms, etc. and Licence for import and export of arms, etc. These Sections also start with the words, "No person shall ....."

(f) Section 10(1)(b) provides that person being a bonafide tourist belonging to any such country as the Central Government may, by Notification in the Official Gazette specify, who is not prohibited by the laws of that country from having in his possession any arms or ammunition, may, without a licence under this section but in accordance with such conditions as may be prescribed, bring with him into India arms and ammunition in reasonable quantities for use by him for purposes only of sport and for no other purpose. This provision deals with specific case of bonafide tourists coming into India and makes special provisions for use of arms for sport purposes exclusively. However, the explanation below it is as under:-

"Explanation.- For purposes of clause (b) of this proviso, the word 'tourist' means a person who not being a citizen of India visits India for a period not exceeding six months with no other object than recreation, sight-seeing, or participation in a representative capacity in meetings convened by the Central Government or in international conferences, associations or other bodies."

(g) This explanation, therefore, further limits the scope even for the tourists and explains that 'tourist' would mean a person who not being a citizen of India visits India for a period not exceeding six months with

no other object than recreation sight-seeing, or participation in a representative capacity in meetings convened by the Central Government or in international conferences, associations or other bodies. In this explanation also the use of the words, 'a person who not being a citizen of India' are made.

(h) Sections 11 and 12 deal with power to prohibit import or export of arms, etc. and power to restrict or prohibit transport of arms.

(i) Section 13 with regard to the grant of licences and Section 14 with regard to refusal of licences, which are more relevant for the purposes of the question under consideration, are reproduced as under:-

"13. Grant of licences.- (1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry,if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit,make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant-

(a) a licence under Section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection ;

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or ;

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under Section 3 in any other case or a licence under Section 4, Section 5, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licenses.- (1) Notwithstanding anything in Section 13,the licensing authority shall refuse to grant-

(a) a licence under Section 3, Section 4 or Section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II.-

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement."

(j) Even right of Appeal under S.18 has been made available to any person aggrieved by an order of the licencing authority and is not restricted to 'citizen' only.

(k) In Section 13(3)(a)(i) it has been provided that the licensing authority shall grant a licence under Section 3 i.e. Licence for acquisition and possession of firearms and ammunition - to a citizen of India and thus licence under S.3 is to be granted only to citizens and not to any person. Under S.13(3)(b) the licensing authority shall grant the licence under Sec.3 in any other case or a licence under Sections 4, 5 6, 10 or 12, if the licencing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. Thus Sec.13(3)(b) in terms contemplates the eligibility of any person to apply for the licence under S.3 in cases other than those of citizens as also under other Sections i.e. Sections 4,5,6, 10 and 12. A reading of Sec.13(3)(a)(i) shows that the grant of licence under S.3 in respect of smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection is available to the citizens only and not to any person but the licence with regard to the arms of the description other than those which are given under S.13(3)(a)(i) may be considered in respect of any person other than the citizen provided the applicant has a good reason for obtaining the same.

(l) Section 14 with regard to the refusal of the licences starts with non obstante clause and says that notwithstanding anything in Sec.13, the licensing authority shall refuse to grant licence under Sections 3, 4 or 5 where such licence is required in respect of any prohibited arms or prohibited ammunition and the licence in any other case under Chapter II - where such licence is required by a person whom the licensing authority has reason to believe to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or

ammunition or to be of unsound mind or to be for any reason unfit for a licence under this Act or where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(m) Sec.14(2) says that licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property and sub-section (3) of Sec.14 casts an obligation on the licensing authority to record reasons in writing for refusal of the licence and furnish the same to the person concerned on demand unless the licensing authority is of the opinion that it will not be in public interest to furnish such a statement.

8. It is, therefore, clear that throughout the Scheme of the Act, a distinct use of the word 'person' and 'citizen' has been made and it cannot be spelled out that under the Scheme of the Act there is any express or implied ban against the eligibility of a person other than a citizen of India to ask for an arms licence.

9. Arms Rule 51 provides for the application for licence and Rule 52 deals with the form of licence. Rule 51(a), 51(e) and Rule 52(1) are reproduced as under:-

"51.Application for licence.- Every application for the grant of a licence under these rules-

(a) shall be submitted in Form 'A';

(b) **********

(c) **********

(d) **********

(e) where an application is for the grant of licence in Form II, Form III, Form III-A, Form IV,Form V, or Form VI, from a person other than a bona fide tourist as defined in Section 10(1)(b) of the Act it shall be accompanied by two passport size copies of the latest photograph of the applicant.

Provided that-

(i) an application by a member of the armed forces of the Union shall be made through his commanding officer to the licensing authority having jurisdiction in respect of the place to which he is for the time

being posted; and

(ii) the licensing authority may, in accordance with any instructions issued by the State Government in respect of all or any class of firearms require the personal attendance of the applicant before granting or renewing the licence applied for."

-- Form 'A' under Rule 51 as prescribed in Schedule III to the Arms Rules, 1962 is reproduced as under:-

"FORM "A"
FORM OF APPLICATION FOR AN ARMS LICENCE
(See Rule 51)

PART A
Identity of applicant

1. Name:
2. Father's/husband's name:
3. Place of birth (Nativity):
4. Date of birth in Christian era
   both in words and figures:
5. Present Address:
   **(a) Nearest Police Station:
6. Permanent address :
   **(a) Nearest Police Station:
7. Occupation: and designation of office,
   held if any (together with address):

Signature/Thumb impression

Note.- ** Nearest Police Station means the police station under whose jurisdiction the place given in the address comes.

PART B
Other particulars of applicant

9. Whether the applicant has been-
   (a) convicted- if so, the offence(s), the sentence and date of sentence;

(b) ordered to execute a bond under Chapter VIII of Code of Criminal Procedure, 1973 (2 of 1974) for keeping the peace of for good behaviour- if so, when and for what period;

(c) prohibited under the Arms Act, 1959, or any other

law from having the arms/ammunition.

10.(a) Whether the applicant applied for a licence before - if so, when, to whom and with what result;

(b) whether the applicant's licence was ever suspended or cancelled/revoked - if so, when and by whom and on what account;

(c) whether any other member of the applicant's family is in possession of an arms licence, if so, particulars thereof.

11.Whether the applicant:-

(a) is a licensee or exemptee, if so, description of the arms, held;

(b) has a safe place to keep the arms;

(c) is a bona fide tourist, if so

(i) name of the country to which he belongs;

(ii) whether he is prohibited by the laws of his country from having in his possession any arms and ammunition;

(iii) the probable date of his arrival in India;

Note.- Bona fide tourist is permitted to bring into India, subject to the conditions specified in Section 10 and in rule 32, arms and ammunition in reasonable quantities for his use for purpose only of sport and for no other purpose.

PART C

Particulars of Licence

12. Need for licence:

13. The Form in which the licence is required:

14. Description of arms/ammunition

15. (a) Area within which applicant wishes to carry arms

(b) Place where arms/ammunition will be kept/ manufactured etc.

(c) Place/route of import/export/transport.

16. Other particulars required as in the relevant licence

Form.

17. Claims for special consideration.

Note.- Against Column 12 the applicant should clearly mention the purpose(s) for which the licence is required - such as use, acquisition, possession, carrying, manufacture,sale, transfer, repair, convert, proof-test, import, reimport, export, re-export, transport, self-protection, sport, display, destruction of wild animals which do injury to human being/cattle, protection of crops and cattle, target practice/shooting temporary possession as bona fide traveller visiting India etc.

PART D

For applicant requiring licence for import/export/ transport/re-export and reimport

18. (a) Whether the previous sanction of the concerned authority required under Rule 50 if any, has been obtained, and, if so,

(b) the evidence in support thereof

DECLARATION:

I hereby declare that the above particulars given in the application are true, complete and correct to the best of my knowledge and belief. I understand that in the event of any information being found false or incorrect at any stage, I am liable to be proceeded against and action taken under the relevant provisions of the Arms Act, 1959, the Arms Rules, 1962,and other Central enactments or the law for the time being in force.

Signature/Thumb impression of applicant.

Place:
Date:

(Note.- Strike off the entries not relevant)

Warning: Suppression of any factual information or furnishing of any false or wrong information in the application Form in violation of Rule 51-A will render the applicant liable for punishment under Section 30 of the Arms Act, 1959."

10. A reading of all these provisions read with the entries required to be filled in, in the Form of Application for arms licence, do show that the Scheme of the Act has through-out made a distinction between a 'person' and 'citizen' and what is discernible from the provisions, referred to hereinabove, is that there is no express or implied ban or restriction against the consideration of the Application of a person for the licence on the basis of citizen except as provided in Sec.13(3)(a)(i) and, therefore, it is not possible to hold that only a 'citizen' can apply for the licence and that the grant of licence can be denied only on the ground that the petitioner is not a 'citizen'. The word 'person' as such may not have been defined but even the framers of the Constitution have made a distinction with regard to the use of the word 'person' as against the word 'citizen'. Even under Part III of the Constitution of India in respect of fundamental rights under Article 14 the right of equality before law has been made available to 'any person' notwithstanding as to whether he is a citizen of India or not. The right of equality before law has been made available to 'any person' whereas the right under Article 15 is available only to citizens. Similarly the right of equality in matters relating to employment is also confined to citizens. The right under Article 19 of the Constitution with regard to the protection of certain rights regarding freedom of speech, etc. is also given to citizens only, whereas the right of protection of life and personal liberty under Article 21 is available to 'all the persons' and so is the position with regard to right of protection against arrest and detention in certain cases under Article 22. Thus the founding fathers of the Constitution have also kept in view the distinction between 'person' and 'citizen' and while certain fundamental rights have been made available to all the persons, certain other fundamental rights have been kept confined to citizens only. The Constitution of our country is the fountain source of law and the laws are enacted by the Legislature under the Constitution, while considering the provisions of the enactments made by the Parliament or the State Government, guidance can always be taken from the wholesome provisions of the Constitution. If the founding fathers of the Constitution have kept the distinction of 'person' and 'citizen' in mind while framing the Constitution and such Constitution has been given by the people of India to themselves, there is ample justification for taking it as a guiding principle while interpreting the provisions of the different Statutes whether Central or State. I, therefore, find

that so far as the eligibility to apply for licence under the Arms Act is concerned, there is no restriction against the persons or citizens except as provided in the Act with regard to the licence meant for a particular type of weapon. It is a different matter altogether as to whether in fact the licence is to be granted or not and that would depend upon the satisfaction of the licensing authority as to whether the person, by whom the licence is required, has got good reason for obtaining the same or as to whether there are grounds to refuse the licence in accordance with the provisions of Sec.14 of the Act, as given out hereinabove.

11. Even under Sec.97 of the I.P.C. - right of private defence of the body and of property has been made available to every person subject to the restriction as contained in Sec.99 and there is no basis to take a different view that in absence of Indian citizenship to the petitioner for licence, the licence cannot be granted.

12. Coming to the orders, as have been passed in the instant case, I find that so far as the order dt.20.3.98 passed by the District Magistrate is concerned, it only says that according to the information received from the Government under the provisions of S.13(3) of the Arms Act, 1959, the arms licence can be granted only to a person, who is a citizen of India and since the petitioner holds the citizenship of Kenya no arms licence could be granted to him and, therefore, the application has been filed. In the order, which has now been passed on 15.6.99 by the appellate authority, after this Court's order dt:26.4.99 in the remanded proceedings, the appellate authority has noticed that according to S.1(2) of the Arms Act, 1959, the said legislation applies only to the citizens of India and under S.13(3) the District Magistrate had been appointed as licensing authority. Sec.1(2) of the Arms Act is reproduced as under:-

"1. Short title, extent and commencement.- (1)
****
(2) It extends to the whole of India."

13. It is, therefore, clear that the appellate authority has misread the provisions inasmuch as Sec.1(2) says that the Act extends to whole of India and not that this Act applies only to the citizens of India. The applicability of an Act to the whole of India does not mean that it only applies to the citizens of India. Sec.1(2) prescribes territorial limits with regard to the

extension of the Act and it cannot be treated to restrict that the Act applies only to the citizens. Had it been so, the use of the word 'person' would not have been there in the various provisions through-out the Scheme of the Act. It is settled principle of interpretation of Statutes that the Legislature does not waste word. The Legislature has consciously used the word 'person' in certain provisions and the word 'citizen' in other provisions and what is not prescribed in S.1(2) could not be read by the appellate authority.

14. Be that as it may, the order, as has been passed by the appellate authority, which is impugned in this petition, also shows that the heart and soul of the order is Sec.13 of the Arms Act on the basis of which the Appeal has been rejected only for the reason that the petitioner is not a citizen of India and, therefore, he is not entitled to the licence. It may also be pointed out that the appellate authority has noticed that the petitioner had earlier applied for a licence to hold the arms and such licence had also been granted to the petitioner, which was lately surrendered by him because of his own reason. The appellate authority has also explained the factum of the grant of the licence to the petitioner at the earlier point of time in the year 1992 by saying that in the prescribed Form, the applicant is required to give his nationality and native place and at that time while applying for the licence, which was granted in the year 1992 and which was surrendered by him later on, the petitioner had not mentioned his nationality and his native place in the application and this fact was lost sight of by the Investigating Officer and on the basis of the report of the Investigating Officer, his application to possess arms was granted. Had the petitioner's application been rejected on the ground of suppression of relevant information, it would have been a different matter altogether, but the grant of the licence to the petitioner in the year 1992 is not in question in the present proceedings. What is in question in this petition is that on the strength of the provisions of Sec.13 whether his application has been rightly rejected. There is no dispute that this time while applying in Form 'A' under Rule 51 the petitioner had clearly disclosed the place of birth as Nairobi (Kenya) and in column 3A he had mentioned his nativity as Kenya. With regard to the this Application there is no allegation that the petitioner has suppressed any information, which he was required to disclose.

15. Learned counsel for the petitioner has cited AIR 1993 Allahabad 291 (Ganesh Chandra Bhatt v. District

Magistrate,Almora) so as to lend strength to his argument that the right to possess an arm in this country is a fundamental right and such right is embedded in Article 21 of the Constitution. He has placed reliance on para 20 of this judgment, which is reproduced as under:-

"20. In my opinion the right to bear arms is embedded in Article 21 of the Constitution, and hence it is a fundamental right. No doubt this right, like all fundamental rights, is subject to reasonable restrictions, but the reasonability of the restriction must be judged from the point of view of the prevailing social conditions, and not in the abstract. Hence what may have been reasonable earlier may no longer be reasonable today."

In the case before Allahabad High Court, there was no dispute with regard to citizenship of the applicant as the applicant was a Indian citizen. Therefore, this case,in the opinion of this court, has no direct relevance to the controversy involved in the present case. Moreover, I respectfully do not agree with the view taken by the Allahabad High Court that the right to bear arms is embedded in Article 21 of the Constitution and hence it is a fundamental right. Article 21 is with regard to the protection of life and personal liberty and according to this Article, no person shall be deprived of his life or personal liberty except according to procedure established by law. I fail to understand how such a right, which has been given against the deprivation of life and personal liberty except in accordance with the procedure established by law, would include a right to possess arm and in my considered opinion, the view that the right to bear arm is embedded in Article 21 of the Constitution cannot be countenanced. If such a view is accepted, then every person would claim to possess a licence for an arm and the possession of the arm will become a fundamental right enforceable under law, which is not provided by the Constitution in any terms. Right to possess any arm is to be regulated by the provisions of the Arms Act and the Rules made thereunder. But even if the right to possess arm is not a fundamental right under the Constitution, it cannot be said in view of the Scheme of the Act, to which reference has been made hereinabove, that a person, who is not a citizen of India, is not eligible to get the licence or that the application for possessing the licence for arm is to be rejected only on the ground that the applicant is not a citizen of India. It is a different matter that even certain fundamental rights, as referred to above, have been made available to persons, who are not

citizens. But that apart a right of this nature, whether it is a fundamental right or not, the right of the consideration of an application for possessing an arm in accordance with the provisions of the Arms Act and Arms Rules cannot be defeated by saying that such right is available and restricted only to the citizens and not the persons other than citizens. 'Arms Act' itself is a law and Article 14 of the Constitution affords equality before law and equal protection of laws not only to citizens but to all persons.

16. At this stage, I may also deal with an ancillary point raised by the learned A.G.P. to the effect that now the petitioner has shifted to Mumbai and, therefore, the petitioner should apply for the licence in the State of Maharashtra and the petitioner's grievance should not be considered in this petition. Grant of the licence as per the provisions of the Arms Act does not depend on the residence of the petitioner. Columns in the prescribed Form in which the application is required to be made, requires the applicant to give his present address and also the permanent address in Columns 5 and 6 respectively. In column 7 of the Form, the occupation and designation of office, held if any (together with address) is required to be given. That itself shows that the applicant may have a present address and a permanent address. The present address of the applicant may be in a different State also and his permanent address may be also in a different State and his occupation and designation of the office may be in yet another State and Rule 51(b) of the Rules says that application for the grant of a licence under these Rules may be presented by the applicant in person or sent through the medium of post office or otherwise, to the licensing authority, as far as possible, having jurisdiction in respect of the place where he ordinarily resides or has his occupation. Thus, this Rule clearly contemplates that the application can be filed before the licensing authority in whose jurisdiction the applicant ordinarily resides or in whose jurisdiction he has his occupation. Therefore, the petitioner, who was residing at Vapi at the time when he moved the Application and now, even if he has shifted to Mumbai, the fact is not in dispute that his place of occupation continues to be Vapi and, therefore, the argument raised on behalf of the respondents that because of the change in the place of residence, the petitioner should apply for licence in Maharashtra does not find support because the Rule contemplates the competence of the licensing authority with reference to the place of residence as well as the place of occupation and it has to be agreed on all hands that the place of residence and

place of occupation may be different and may be in different States too. Thus, it cannot be said that the petitioner's grievance does not need any adjudication in this petition merely because of the change of his residence while the admitted fact is that his place of occupation continues to be Vapi, which is in the State of Gujarat.

17. I may also decide yet another contention which was raised on behalf of respondents that the use of the word 'person' in the Act and the Rules is with reference to the bonafide tourist who, not being citizen of India, visits India for a period not exceeding six months and, therefore, the meaning of the word 'person' should be restricted so as to make reference to the words 'bonafide tourists' only. It may be pointed out that these words 'bonafide tourists' have been mentioned in Sec.10(1)(b). Sec.10 deals with licence for import and export of arms etc. The language of Sec.10 shows that it is not a case of possession of a licence for a firearm. It is a licence for the purpose of import and export of arms, which is different than the type of licence which has been sought by the petitioner in the instant case. For the purpose of a licence for import and export of arms, the provisions has been made in Sec.10(1)(b) in the terms with the explanation thereunder and this is only explanatory so as to see as to who should be treated as a bonafide tourist for the purpose of grant of licence. That does not mean that the use of the word 'person' only refers to bonafide tourist and it cannot be any person other than a tourist. The object of Sec.10 is only to provide to a person, who comes as a tourist to India from other country may bring with him into India arms and ammunition in reasonable quantities for use by him for purposes only of sport and for no other purpose and further that he visits India for a period not exceeding six months with no other object than recreation, sight seeing, or participation in a representative capacity in meetings convened by the Central Government or in international conferences, associations or other bodies. Thus the purposes, which are mentioned in the explanation with regard to a tourist, are not exhaustive and do not take care of the person who visits this country otherwise than as a tourist. In the present case when the petitioner has been permitted to install several industries in this country and he is continuing with such industries and it is not the case of the respondents that he has come on a tourist visa and when the petitioner's application is also not for a licence under S.10 of the Arms Act, this argument has no direct bearing with the petitioner's right of filing an application for grant of

licence and the eligibility for the same. The petitioner's application is for the grant of licence under S.3 of the Arms Act for his own protection and so far as the grant of the licence under S.3 for own protection is concerned, the right is available to persons other than citizens also in terms of the Act and the Rules and there is no restriction that such right is available only to citizens and not to any other person.

18. It was also argued by the learned A.G.P. that in such cases if a licence is granted even under S.3 for the purpose of self protection to any person, who is not a citizen of India and if he commits any offence and flees from this country, it will not be possible for the State to hold up him in case he misuses the arm for which the licence is granted to him and, therefore, the licence should not be granted and right should be made available only to citizens. I am afraid, this will be a clear digression from the point involved in this case. If any person misuses the licence, there are provisions under the relevant law to take care of it. Moreover, the question before this court is very limited as to whether the application for the licence under S.3 is to be rejected only because a person is not a citizen of India. This Court is not concerned as to whether in fact the licence is granted to the petitioner or not. That is certainly a subject matter of the satisfaction of the licencing authority as provided under S.13(3)(b) and not for this Court. On considering the petitioner's application on merit, the licensing authority may or may not think it to be a fit case for grant of the licence, but the application of the petitioner could not be outrightly rejected only on the ground that he is not a citizen of India. Beyond this, the scope of this petition cannot be widened while examining the validity of the impugned orders passed in the instant case because it is clearly made out that the sole basis on which the petitioner's application for grant of licence has been rejected is that he is not a citizen of India. There is nothing contained in any of the orders with regard to the merits as to whether the petitioner in fact has a case for grant of licence or not and as to whether the licence is in fact required by him for good reasons. In fact it is clear from the reading of the impugned orders that the authorities have not even considered the petitioner's application on merits and have not gone to the question of arriving at the satisfaction as to whether the petitioner had good reason for obtaining licence or not for his own protection or that in view of the conditions prevailing in the area of his occupation, whether the

industrialists like the petitioner are facing any such threat so as to make it imperative or necessary for them to possess licence. This controversy is not at all there before this Court.

19. The upshot of the aforesaid adjudication is that the impugned order dt.20.3.98 as was passed by the District Magistrate, Valsad and the impugned order dt.15.6.99 as has been passed by the Deputy Secretary, Home Department, Government of Gujarat cannot be sustained in the eye of law. The same are hereby quashed and set aside. The concerned licensing authority is directed to entertain the petitioner's application for grant of the licence, as has been prayed by him, and such application shall be considered on its merit,in accordance with the provisions of S.13(3)(b) of the Arms Act and shall not be rejected only on the ground that the petitioner is not a citizen of India. Such order shall be passed at the earliest possible opportunity but in no case later than six weeks from the date the certified copy of this order is produced before such authority. This Special Civil Application is allowed in the terms, as aforesaid and rule is made absolute. No order as to costs.

(M.R.Calla,J)